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IN THE
COURT OF APPEALS OF INDIANA

JONATHAN STOWE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0604-CV-157
	)	
DANUEL and RHONDA KENNETT,	)	
	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable George Beamer, Judge
Cause No. 71D01-0505-SC-4952

February 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Jonathan Stowe appeals the small claims court's judgment for Danuel and Rhonda Kennett. Stowe raises one issue, which we restate as whether the small claims court erred by entering judgment in favor of the Kennetts in the amount of $1,898.00. We reverse and remand.

The relevant facts follow. Stowe is the owner of a martial arts school in Mishawaka, Indiana. On June 5, 2002, the Kennett's eleven-year-old son, K.K., enrolled as a student at Stowe's school. Rhonda Kennett signed K.K.'s student information form, which included the following provisions: "I understand there is a no refund policy on any monies I will pay World Champion Taekwondo or ATA*" and "*This includes the policy of full tuition payment whether the student attended one class or every class." Appellant's Appendix at 85.

In 2002, K.K. enrolled in an accelerated program to get his black belt. Stowe handwrote a document entitled, "[K.K.'s] Accelerated Success" and quoted a cost of $2,168.00, which included $1,080.00 for three private lessons per week. Id. at 84. In exchange for a lump sum payment, the Kennetts received a twenty-five percent discount and paid $1,626.00 for the lessons. According to Rhonda Kennett, K.K. was to receive thirty to thirty-five private lessons; however, according to Stowe, K.K. was to receive the private lessons until he received his black belt. K.K. received his black belt after ten private lessons.

On December 5, 2003, Danuel Kennett signed a Student Agreement enrolling K.K. in a thirty-five month leadership program beginning on December 5, 2003, and

ending on November 11, 2006. The Kennetts made a lump sum payment of $1,716.00 for the leadership program. If the Kennetts had paid for the program on a monthly basis, the cost would have been $109.00 per month. The Student Agreement provided:

> If by reason of death or permanent disability, the buyer is unable to continue the agreement, buyer or buyer's estate shall be relieved from the obligations of this contract, and if buyer has prepaid any sum, that amount shall be promptly refunded.
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> * * * * *
>
> YOU THE BUYER MAY CANCEL THIS AGREEMENT BY MIDNIGHT OF SCHOOL'S THIRD BUSINESS DAY AFTER THE DATE OF THIS AGREEMENT, AND SUCH CANCELLATION MUST BE IN WRITING TO THE SCHOOL. IN THE EVENT THE SCHOOL CLOSES AND CEASES DOING BUSINESS, YOU ARE NO LONGER OBLIGATED TO MAKE PAYMENTS UNDER THIS AGREEMENT.

Id. at 86.

In the summer of 2004, K.K. worked for Stowe for thirty days. The Kennetts contend that Stowe agreed to pay K.K. $400 for his work but only paid K.K. $250.00.

Pursuant to the Student Agreement, K.K. attended the leadership program and took lessons approximately three times a week. K.K. obtained his second-degree black belt on January 7, 2005. On March 14, 2005, K.K.'s instructor left his employment at Stowe's school. On April 10, 2005, K.K. stopped taking lessons at Stowe's school.

The Kennetts requested a refund from Stowe, and when Stowe refused based upon the no refund policy, the Kennetts filed a Notice of Claim in the small claims court seeking $2,000.00. The Kennetts attached a list of complaints to the Notice of Claim, including that: (1) the quality of the training had decreased; (2) the "forms" were not based on the "certified forms of the industry"; (3) K.K. was being taught by instructors

with lower belt ranks; (4) they were not receiving the curriculum that they paid for; (5) K.K. was not happy with the training program; and (6) they had not received the private lessons that they paid for. Appellant's Appendix at 6. After a small claims court trial, the small claims court awarded the Kennetts damages in the amount of $1,898.00.

The issue is whether the small claims court erred by entering judgment in favor of the Kennetts in the amount of $1,898.00. We first note that the Kennetts did not file an appellees' brief. When the appellees have failed to submit an answer brief we need not undertake the burden of developing an argument on the appellees' behalf. Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error. Id. Prima facie error in this context is defined as, "at first sight, on first appearance, or on the face of it." Id. Where an appellant is unable to meet this burden, we will affirm. Id.

Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). Our standard of review is particularly deferential in small claims actions, where "the trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law." Ind. Small Claims Rule 8(A); Mayflower Transit, Inc. v. Davenport, 714 N.E.2d 794, 797 (Ind. Ct. App. 1999). Nevertheless, the parties in a small claims court bear the same burdens of proof as they would in a regular civil action on the same issues. Ind. Small Claims Rule 4(A); Mayflower Transit, 714 N.E.2d at 797. While the method of proof may be informal, the relaxation of evidentiary rules is not the

equivalent of relaxation of the burden of proof. Mayflower Transit, 714 N.E.2d at 797. It is incumbent upon the party who bears the burden of proof to demonstrate that it is entitled to the recovery sought. Id. Stowe appeals from a general judgment, which may be affirmed upon any legal theory supported by the evidence. Id.

It is not completely clear how the small claims court arrived at the judgment amount of $ 1,898.00. However, it appears that the small claims court may have awarded $150.00 for the work performed by K.K. along with a portion of the cost of the leadership program and a portion of the cost of the black belt lessons. We will address each of these possible damages separately.

A. Work performed by K.K.

In the summer of 2004, K.K. worked for Stowe for thirty days. The Kennetts contend that Stowe agreed to pay K.K. $400 for his work but only paid K.K. $250.00. Stowe agreed that he hired K.K. to work for him. The dispute is over the amount that Stowe agreed to pay. On appeal, Stowe argues only that "there is nothing in writing whereby Stowe agreed to pay [K.K.] the $400.00 his mother claims was to be the payment." Appellant's Brief at 9. However, this argument is simply a request that we reweigh the evidence with regard to the agreement between Stowe and K.K. and to assess the credibility of the witnesses, which we cannot do. See, e.g., Walker v. Elkin, 758 N.E.2d 972, 975 (Ind. Ct. App. 2001). We cannot say that the small claims court judgment for this claim is erroneous.

B. Black Belt Lessons.

In 2002, K.K. enrolled in an accelerated program to get his black belt, and the Kennetts paid $1,626.00 for the lessons. According to Rhonda Kennett, K.K. was to receive thirty to thirty-five private lessons; however, according to Stowe, K.K. was to receive the private lessons until he received his black belt. K.K. received his black belt after ten private lessons. The Kennetts requested a refund for the private lessons that were not provided.

Stowe argues, in part, that the Kennetts were not entitled to a refund of any part of the $1,626.00 because of the no refund policy. Rhonda Kennett signed K.K.'s student information form, which included the following provisions: "I understand there is a no refund policy on any monies I will pay World Champion Taekwondo or ATA*" and "*This includes the policy of full tuition payment whether the student attended one class or every class." Appellant's Appendix at 85.

The no refund policy is similar to an exculpatory clause. "Courts in Indiana recognize exculpatory clauses in contracts and presume that the contracts represent the freely bargained agreement of the parties." Indiana Dept. Of Transp. v. Shelly & Sands, Inc., 756 N.E.2d 1063, 1072 (Ind. Ct. App. 2001), trans. denied. "No public policy exists to prevent contracts containing exculpatory clauses."[1] Id. "However, some exceptions

[1] Stowe concedes that his agreements with students are subject to the Indiana Health Spa Services Act, Ind. Code § 24-5-7-1 to -18. This agreement would not seem to comply with the Act, but the Kennetts did not make this argument during the small claims court trial and did not file an appellee's brief in this appeal. We will not make the arguments for the Kennetts. See, e.g., Johnston v. Johnston, 825 N.E.2d 958, 962 (Ind. Ct. App. 2005) ("This rule was established for our protection so that we can be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee."). Moreover, even under the Indiana Health Spa Services Act, a refund

do exist where the parties have unequal bargaining power, the contract is unconscionable, or the transaction affects the public interest such as utilities, carriers, and other types of businesses generally thought to be suitable for regulation or which are thought of as a practical necessity for some members of the public." Id. None of these exceptions seem to exist here, and the no refund policy is valid. Consequently, the small claims court erred by awarding a partial refund of the Kennetts' tuition for the private black belt lessons.

C. Leadership Program.

Danuel Kennett signed a Student Agreement enrolling K.K. in a thirty-five month leadership program beginning on December 5, 2003, and ending on November 11, 2006. The Kennetts made a lump sum payment of $1,716.00 for the leadership program. On March 14, 2005, K.K.'s instructor left his employment at Stowe's school, and on April 10, 2005, K.K. stopped taking lessons at Stowe's school. Thus, K.K. took the lessons for only seventeen of the thirty-five months allowed under the Student Agreement. The Kennetts argued that K.K. was not receiving the training for which they had paid and requested a partial refund of the tuition paid.

On appeal, Stowe argues that the Kennetts were not entitled to a refund pursuant to the no refund policy and the Student Agreement. The Student Agreement provided:

> If by reason of death or permanent disability, the buyer is unable to continue the agreement, buyer or buyer's estate shall be relieved from the

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would not be mandated under these circumstances. See Ind. Code § 24-5-7-5, -6 (detailing refund and cancellation requirements).

> obligations of this contract, and if buyer has prepaid any sum, that amount shall be promptly refunded.
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> * * * * *
>
> YOU THE BUYER MAY CANCEL THIS AGREEMENT BY MIDNIGHT OF SCHOOL'S THIRD BUSINESS DAY AFTER THE DATE OF THIS AGREEMENT, AND SUCH CANCELLATION MUST BE IN WRITING TO THE SCHOOL. IN THE EVENT THE SCHOOL CLOSES AND CEASES DOING BUSINESS, YOU ARE NO LONGER OBLIGATED TO MAKE PAYMENTS UNDER THIS AGREEMENT.

Appellant's Appendix at 86.[2]

The Student Agreement details the circumstances under which a refund is available. Even accepting the Kennetts' arguments that: (1) the quality of the training had decreased; (2) the "forms" were not based on the "certified forms of the industry"; (3) K.K. was being taught by instructors with lower belt ranks; (4) they were not receiving the curriculum that they paid for; and (5) K.K. was not happy with the training program, these complaints are not a basis under the Student Agreement for a refund. Appellant's Appendix at 6. Consequently, we conclude that the small claims court erred by awarding a refund of the Kennetts' tuition paid under the Student Agreement.

For the foregoing reasons, we reverse the small claims court's judgment and remand for proceedings consistent with this opinion.

Reversed and remanded.

C. J. KIRSCH and MATHIAS, J. concur

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[2] Stowe contends that the Student Agreement complied with the Indiana Health Spa Services Act, Ind. Code § 24-5-7-1 to -18.